

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	MM Docket No. 03-130
Definition of Radio Markets for	)	
Areas Not Located in an	)	
Arbitron Survey Area	)	

**To:** The Commission

**REPLY COMMENTS OF NM LICENSING LLC**

NM Licensing LLC submits the following reply comments in response to Report and Order and Notice of Proposed Rulemaking, FCC 03-127, released July 2, 2003 (the “Notice”).

The Commission, in its Notice, seeks comment on whether and how it should modify the methodology of Rule 73.3555(a) for identifying radio markets and counting the number of stations in non-Arbitron metros. Specifically, the Commission seeks comments on whether the FCC should rely on counties or in some cases, divide counties. Further, the Commission seeks comments on whether radio stations should be assigned to radio markets based on the location of their communities of license. The Commission also seeks comments on metropolitan areas (MA) or cellular market areas (CMAs).

**Congressional Intent**

**Section 307(b) of the Communications Act**

The FCC’s concern arises from a fundamental failure to recognize that the locations and coverage areas of radio stations are not the result of the free market, but of Congress’ specific

mandate in Section 307(b) of the Communications Act of 1934, as amended.<sup>1</sup>

“§307(b) Allocation of facilities. In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”

The primary concern of the statute is a fair and equitable distributions of radio service among the states and communities. See FM Channel Assignments, 10 RR 2d 1538 (1967). Accordingly, absent a change in Section 307(b), the Commission must continue to assign radio stations to markets based on the location of their community of license.

If economic efficiency were the Commission’s primary concern in granting radio licenses, it would have assigned all radio service to high power stations in the largest cities. Instead, the FCC, pursuant to Congressional mandate, assigned and/or licensed radio stations with varying powers and coverage areas to communities throughout the United States in an effort to maximize service in a fair and equitable manner.<sup>2</sup> Thus, within any given geographic area or market, there will be different size radio stations serving various principal communities. This conflict between the concept of fair and efficient distribution of radio stations and the concept of “economic reality” is central to the various market definitions explored in the Notice.

---

1

47 USC §307(b).

2

Significant differences exist in the ability of various radio stations. These differences are clearly illustrated in Rule 73.211(b)(1) which shows that the radius of a full power Class A FM station’s service area as 28 km. This compares to a radius of 52 km for full Class B FM station facilities and a radius of 92 km for full Class C FM station facilities. Applying the formula  $\pi R^2$  to these distances, a full Class A FM service area is 2,462 square km; a full Class B FM service area is 8,490 square km; and a full Class C FM service area is 26,577 square km. Note that higher classes of FM stations are capable of serving up to ten times the area served by a full power Class A FM station. Even greater disparities exist in AM stations whose powers vary from less than 1 kW to 50 kW. Further restrictions apply to AM daytime and nighttime power.

MAAs, Counties and CMAs fail to Recognize the Existing Facilities Differences  
and the Impact on Diversity and Competition

Good reason exists to keep Rule 73.3555(a)'s station-specific methodology for defining a station's radio market. As the Notice recognizes, many of the radio stations in the United States are outside of all Arbitron metro markets. This is hardly surprising. Section 307(b) of the Communications Act allocates radio service on the basis of states and communities. FCC interference protection criteria and the requirement that stations place a "City Grade" signal over their various communities of license insure that significant differences will exist in the relative ability of radio stations to cover any geographic area. The present Rule 73.3555(a) radio market definition takes these differences into account. An MA, County and CMA does not.<sup>3</sup>

Conclusion

In view of the foregoing, NextMedia submits that retention of the present contour based radio market definition is mandated by Congress' action in adopting Section 202(b) of the 1996 Act. Certainly the adoption of any radio market definition that reduces the number of radio stations a licensee may own in a radio market would directly contravene the intent of Congress expressed in the 1996 Act. Moreover, the proposed market definitions are completely unsatisfactory for purposes of the Multiple Ownership Rules. They ignore the significant differences that exist among the several classes of radio stations serving their communities of license.

---

3

The Commission embraced CMAs for cellular service, recognizing that the desired coverage area was large geographic areas encompassing many communities and counties, but individual cell sites were going to be located within the CMA to provide quality local coverage. This approach is contrary to assigning radio stations to local communities to insure local broadcast service.

Respectfully submitted,

*Matthew L. Leibowitz*

*Joseph A. Belisle*

Counsel for NM Licensing LLC

Leibowitz & Associates, P.A.  
One S.E. Third Avenue  
Suite 1450  
Miami, Florida 33131-1715  
(305) 530-1322 Telephone